

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERMAINE GRANT,

Defendant.

ORDER

11-cv-191-bbc

09-cr-57-bbc

On May 18, 2011, I denied defendant's motion under 28 U.S.C. § 2255. On July 14, 2011, defendant filed a motion requesting a certificate of appealability. Because I had denied defendant's request for a certificate of appealability in the May 18, 2011 order, I denied defendant's motion as moot. Pursuant to Fed. R. App. P. 22(b), defendant's request was forwarded to the Court of Appeals for the Seventh Circuit Court so that it could determine whether such a certificate should issue.

The court of appeals has now advised this court that it cannot consider defendant's request for a certificate of appealability without a notice of appeal. Therefore, I will construe defendant's July 14, 2011 request for a certificate of appealability as a notice of appeal from

the court's May 18, 2011 order denying his § 2255 motion.

Because the \$455.00 fee for filing an appeal did not accompany defendant's motion I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Defendant had appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

IT IS ORDERED that defendant's request request for a certificate of appealability is construed as a notice of appeal and motion to proceed in forma pauperis on appeal.

Defendant's motion to proceed in forma pauperis on appeal is GRANTED.

Entered this 17th day of November, 2011.

BY THE COURT:

Barbara B. Crabb
BARBARA B. CRABB
District Judge